

REMARKS/ARGUMENTS

This Response is promptly filed to place the above-referenced case in condition for immediate allowance.

The status of the claims is as follows:

Cancelled: None;

Amended: None;

Added: None; and

Currently outstanding: 1-48.

No new matter has been added to the application.

Interpretation of the term, “stream”

Applicants state for the record that throughout the application, the terms “stream” and “data stream” are all used consistently with streaming media such as songs, videos, music videos, or other works that are dynamic in nature and that require playing back or presentation to the user over time. The use of this terminology is consistent throughout Applicants’ application and is consistent with an understanding that data streams are generally streamed for the user (generally for entertainment purposes) and not to the user’s computer. Indeed, the packet-wise TCP/IP protocol prevents use of Internet transmissions for such streaming from server to user as such packets are discrete and not continuous.

In fact, in the paragraph beginning at page 4, line 19 of the application, and particularly beginning on page 5 beginning in the middle of line 1, the application states specifically that, “in this case, the data stream comprises audio and/or video information and serves to establish situations similar to each user having his or her individual radio station that he or she programs.”

Due to the foregoing, it can be seen that interpretation of static media (such as webpages) to be data streams is not consistent with Applicants' specification. Such consistency is required by the Manual of Patent Examination Procedure (MPEP) and the Examiner's attention is drawn to MPEP § 2111. There, it specifically states at the beginning that, "During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.' *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)." (Emphasis added) Consequently, Applicants believe that the Examiner has given the current claims an interpretation that is inconsistent with the specification as indicated above.

Furthermore, Applicants believe that the Examiner has given the claims an interpretation that is inconsistent with that of the person of ordinary skill in the art. For example, in the Day patent, use of the term "stream" is in conjunction with media similar to that set forth in Applicants' application, and not static web pages. In the Day patent, column 1, beginning approximately at line 62, it states in essence that continuity and sequential segments be seamless, otherwise the moving video presentation of the data stream will freeze or otherwise detract from the display.

Additionally, audio/video data streams as well as multimedia file data streams are set forth in the Day patent, beginning at column 3, line 39, with the specific text starting at approximately line 55. While such data streams/multimedia file assets are selected via HTML pages, the Day patent inherently recognizes the distinction between static HTML page displays that enable selection of data stream assets from the data streams themselves.

In column 5 of the Day patent, beginning approximately line 49, a data stream is transmitted from the data pump to the client for passage to a multimedia player for

presentation. A seamless data stream is set forth in order to avoid undesirable visual effects in the Day patent in column 6 beginning at approximately line 11. Column 6 of the Day patent at approximately line 26 sets forth a paragraph where the integrity of the video stream or other data stream is important and breaks in an initiated data stream are generally unacceptable. Such unacceptability is that for the user, not the computer or otherwise per the Background section of the Day patent (avoid stream "freezing," etc.)

Such repeated use of the term "stream" and related terms are consistent with dynamic media that is played back to the user in a dynamic fashion over time such that breaks or interruptions are generally unwelcome as they interrupt the flow of the stream. Such interruptions are generally not as important a consideration with static web page presentations as the visual presentation of such pages is generally not subject to the same sort of detracting from such interruptions. As such, for the person of ordinary skill in the art, web pages are generally not data streams.

The Examiner has not presented any basis for any other interpretation of the terms "stream," "data stream," and/or other related terms. As a result, Applicants believe the Examiner has not interpreted Applicants' claims consistently either with Applicants' disclosure or with the knowledge of the person of ordinary skill in the art.

Furthermore, Applicants are able to be their own lexicographers with respect to their claims, their disclosures, and their patent applications per MPEP § 2111.01(III). As a result, the statements and assertions made by Applicants in the application as originally filed all indicate a consistent definition and meaning to the term "stream" and its derivatives, namely that multimedia audios/videos/or other presentations are made for the benefit/pleasure/enjoyment of the user.

No art cited by the Examiner has the same playlist selection mechanism as claimed by Applicants and as set forth in their disclosure. Consequently, Applicants believe the claims are all patentable over the prior art cited by the Examiner either taken alone and separately, or in any reasonable combination thereof including the Day and Abecassis patents.

Claim Rejections

From the outstanding Office action: Claims 1-3, 5-14, 17-26, 28-38, and 41-48 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the Day '015 patent (the Day patent);

Claims 4, 15, 16, 27, 39, and 40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of the Day patent in view of the Abecassis '340 patent (the Abecassis patent); and

With respect to the rejections of Claims 21 – 23 and 46 – 48 as being anticipated by the Day patent, both Claims 21 and 46 require there to be a rating tool. No rating tool is disclosed in the Day patent and no rating tool has been indicated by the Examiner in the rejection. Consequently, Claims 21 and 46 have elements that are not present in the cited prior art. Consequently, Applicants believe that the Day patent neither anticipates nor makes obvious Applicants Claims 21 and 46. Applicants believe that Claims 21 and 46 are patentable over the Day patent as are the claims that depend upon Claims 21 (Claims 22 and 23) and 46 (Claims 47 and 48).

Allowance of these claims at an early date is respectfully requested.

With respect to Claims 1 – 20 and 24 – 45, the Examiner has indicated that feedback is received which expresses a preference regarding the transmitted data stream as well as the selection method being updated (as a result of the preference expressed) to modify the

method's selection of data streams. From the Day patent, Applicant notes that for the Day patent, the database of data streams is actually the assets of such as those in the data pump 213. As indicated in the Day patent in column 3, approximately line 43, "the data pump 111 stores multimedia files, which are also referred to as multimedia assets, and delivers assets to the client." These assets are the audio/video data streams referred to further in column 3, line 56, for which the control server 211 ensures the quality.

Applicants note that the Day patent uses the term "data stream" consistently with respect to describing data that is dynamically presented to the client. Such data streams are in contrast to web pages which are information to be statically viewed by an user or client. This use of the term(s) is consistent in the Day patent, Applicants' application, and the Abecassis patent, indicating almost conclusively the context and operation of the term(s) as would be known by a person of ordinary skill in the art.

In the passages of the Day patent cited by the Examiner, no feedback from the user is received by the system that indicates a user preference regarding the transmitted data stream. In fact, only control signals are sent by the user during data stream transmission that in no way indicate a preference with respect to the transmitted data stream, only its playback. Furthermore, such control signals are not used as preferences to update the selection method used in the Day patent to select other data streams. The passage cited by the Examiner in column 5 of the Day patent is an iterative, but static, method that does not change nor does it take into account any preference expressed by the user with regards to a data stream transmitted from the database of data streams, namely the assets of the data pump 213 (column 5, approximately line 49) that streams the data stream to the client. The method in the Day patent only allows searching and selecting of the data stream assets and is generally an "on-

demand" system. While the user may change the parameters of the search, the method of that search is always the same and no feedback is received regarding a transmitted data stream according to the Day patent.

Consequently, claims 1 - 20 and 24-45 are not anticipated by the Day patent.

The disclosure of the Abecassis patent does nothing to resolve the shortcomings of the Day patent. Although preferences are derived from elements of the database, no feedback regarding such preferences is received regarding a transmitted data stream nor is any selection method updated to better reflect such an expressed preference. Additionally, no additional biasing according to the expressed preference is achieved in the data streams transmitted to the user.

Consequently, all the claims are not obvious in consideration of Day in view of Abecassis.

Reconsideration is respectfully requested.

No narrowing amendment to conform with statute has been made in the application by the amendments to the claims. The arguments made in the earlier Reply are incorporated herein and maintained.

Due to the foregoing, Applicants believe that any and all prima facie cases of anticipation and/or obviousness have been rebutted and that the claims now pending are not subject to any established rejections. Per MPEP § 2132.01, the prima facie cases regarding anticipation have been rebutted as the invention has not been described by any other reference. Per MPEP § 2142 et seq., the prima facie cases regarding obviousness have been rebutted as the invention is not described in any other reference or combination of references plus there is

no suggestion or motivation to combine any references to achieve Applicants' claimed subject matter. Consequently, allowance of the claims is respectfully requested.

The Examiner has also cited a number of patents and publications as pertinent to the presently claimed invention. Since none of these have been relied upon as a reference against Applicants' claims, no further comment is deemed necessary.

Interview Summary

Applicants do not agree with the Interview Summary of 12/23/04 provided by the Examiner since Applicants were not afforded a full and fair opportunity to be heard. Applicants attempted to engage the Examiner regarding the definition of "data streams," related terms, and what the Examiner considered to be data streams in the Day patent.

In view of the above, the Examiner is respectfully requested to reconsider her position in view of the remarks made herein and the structural distinctions now set forth. The Examiner's rejections of the outstanding claims are believed to no longer apply. It is now believed that this application has been placed in condition for allowance, and such action is respectfully requested. Prompt and favorable action on the merits is earnestly solicited. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

The statements made herein with respect to the disclosures in the cited references represent the present opinions of the undersigned attorney. In the event that the Examiner disagrees with any of such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective references providing the basis for a contrary view.

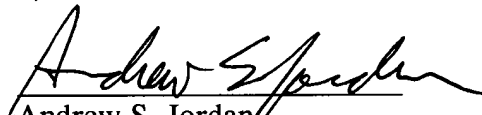
If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or

other meaningful discussion of the case, Applicants invite the Examiner to contact Applicants' representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicants respectfully request the Examiner to pass the application on to allowance. It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicants' Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

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